

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California**

**Order No. R3-2007-0073
September 7, 2007**

**Individual Conditional Waiver of Waste Discharge Requirements
Fourwaters NTMP (1-00NTMP-066 SCR)
Santa Cruz County**

WHEREAS, the California Regional Water Quality Control Board, Central Coast Region (hereinafter Water Board or Regional Board) finds that:

1. California Water Code (CWC) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State of California (hereinafter the State), other than into a community sewer system, shall file with the appropriate Water Board a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board.
2. The Water Board prescribes waste discharge requirements except where the Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is in the public interest pursuant to CWC Section 13269.
3. On July 8, 2005, in accordance with CWC Sections 13267 and 13269, the Water Board adopted Order No. R3-2005-0066 - General Conditional Waiver of Waste Discharger Requirements – Timber Harvest Activities in the Central Coast Region (General Waiver), which includes Eligibility Criteria. Water Board staff uses the Eligibility Criteria to numerically evaluate a timber plan based on factors such as intensity of infrastructure (soil disturbance factor), intensity of harvesting over the past 15 years in the same watershed (cumulative effects ratio), and number and type of streams in the proposed harvest area (drainage density index). The Eligibility Criteria provide Water Board staff with a method for ranking proposed timber harvest activities and assigning them an appropriate monitoring tier. The four monitoring tiers are described as:

Tier I: CDF Forest Practice Rules compliance monitoring.
Road inventory program.
Forensic monitoring as necessary.

Tier II: CDF Forest Practice Rules compliance monitoring.
Road inventory program.
Forensic monitoring as necessary.
Visual and photo monitoring of harvest infrastructure.

Tier III: CDF Forest Practice Rules compliance monitoring.
Road inventory program.
Forensic monitoring as necessary.

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Visual and photo monitoring of harvest infrastructure.
Water Column monitoring.

Tier IV: Individual Conditional Waiver of Waste Discharge Requirements
with appropriate monitoring or
Waste Discharge Requirements with appropriate monitoring

4. On March 13, 2007, Water Board staff received a ROWD for Non-Industrial Timber Management Plan (NTMP) 1-00NTMP-066 SCR Fourwaters NTMP.
5. Water Board staff evaluated the proposed Fourwaters NTMP harvest using the Eligibility Criteria. According to the Eligibility Criteria, the proposed Fourwaters NTMP falls into Tier IV. The Fourwaters NTMP has a high cumulative effects ratio, high drainage density index, medium soil disturbance factor and is proposed in a watershed listed under the Clean Water Act's Section 303(d) list as impaired for sediment. Additionally, the Fourwaters NTMP proposes operations during the winter period.
6. In accordance with CWC Section 13269, the Water Board will regulate by individual conditional waiver of waste discharge requirements, the discharge of waste associated with the timber harvest activities of the Non-industrial Timber Management Plan (NTMP) 1-00NTMP-066 SCR Fourwaters NTMP.
7. The Water Board has adopted the Water Quality Control Plan for the Central Coast Region (Basin Plan), which establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Central Coast Region.
8. Pursuant to the Basin Plan and California State Water Resources Control Board (hereinafter State Board or State Water Board) Plans and Policies, including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
 - a. Agricultural Supply (AGR)
 - b. Aquaculture (AQUA)
 - c. Preservation of Biological Habitats of Special Significance (BIOL)
 - d. Cold Freshwater Habitat (COLD)
 - e. Commercial and Sportfishing (COMM)
 - f. Estuarine Habitat (EST)
 - g. Freshwater Replenishment (FRSH)
 - h. Ground Water Recharge (GWR)
 - i. Industrial Service Supply (IND)
 - j. Migration of Aquatic Organisms (MIGR)
 - k. Municipal and Domestic Supply (MUN)
 - l. Navigation (NAV)
 - m. Hydropower Generation (POW)

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- n. Industrial Process Supply (PRO)
 - o. Rare, Threatened, or Endangered Species (RARE)
 - p. Water Contact Recreation (REC-1)
 - q. Non-contact Water Recreation (REC-2)
 - r. Shellfish Harvesting (SHELL)
 - s. Spawning, Reproduction, and Development (SPWN)
 - t. Warm Freshwater Habitat (WARM)
 - u. Wildlife Habitat (WILD)
 - v. Inland Saline Water Habitat (SAL)
9. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. The factors in CWC Section 13241, including economic considerations, were considered as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Order implement these previously developed water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in the above Finding.
10. The potential water quality impacts associated with the Fourwaters NTMP were analyzed as described in the NTMP and ROWD. The Water Board finds that the proposed discharge will comply with State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Under this policy, water quality degradation may be allowed if the following conditions are met: 1) any change in water quality must be consistent with maximum benefit to people of the State; 2) the project will not unreasonably affect present and anticipated beneficial uses; 3) the project will not result in water quality less than prescribed in the Basin Plan; and 4) the Discharger must treat discharges with the best practicable treatment or control to avoid pollution or nuisance and maintain the highest water quality consistent with maximum benefit to the people of the state.
11. In general, timber harvesting and associated activities can cause the discharge of sediment, and can cause temperature and turbidity increases in receiving waters. The Water Board finds that the proposed harvest, including the discharge of these constituents, will not result in any appreciable or significant adverse changes to water quality due to erosion, sediment discharges, temperature increases or turbidity if the Discharger complies with the NTMP, Forest Practice Rules, Board of Forestry Regulations, the conditions of Order No. R3-2007-0073, and Monitoring and Reporting Program R3-2007-0073.
12. The California Department of Forestry and Fire Protection (CDF) and the California Board of Forestry (BOF) regulate timber harvest activities on non-federal lands in accordance with the Z'berg-Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.) and the California Forest Practice Rules (Title 14, California Code of Regulations, Chapter 4, Section 895 et seq.). CDF is the state agency with

primary jurisdiction over timber activities. The Water Board cannot issue permits to allow timber harvesting. The Water Board regulates water quality impacts of timber plans CDF has found to be in conformance with the Forest Practices Act and Board of Forestry regulations. The Water Board does not have legal authority to require an alternative project.

13. The Secretary of the Resources Agency has certified that the CDF's timber harvest plan regulatory program can function as a substitute for an Environmental Impact Report or a negative declaration (CEQA Guidelines § 15251). Registered Professional Foresters submit either a NTMP or Timber Harvest Plan (THP) and only CDF has the authority to grant discretionary approval for these projects. CDF considers all the significant environmental effects of the project and makes a finding under CEQA Guidelines section 15091 for each significant effect. If CDF finds that the timber operations will not have a significant effect on the environment, a NTMP serves as a substitute negative declaration. If CDF finds that the timber operations may have a significant effect on the environment, the NTMP serves as a substitute environmental impact report, and includes mitigation of potential impacts. CDF considered all the potential significant environmental effects of the Fourwaters NTMP and made a finding that the timber operations identified in the NTMP will not have a significant effect on the environment. Therefore, the above-referenced NTMP serves as a substitute negative declaration for the proposed timber harvest.
14. During their review process in accordance with California Forest Practice Rules (Title 14, California Code of Regulations, Article 2, Subchapter 7, Section 1037.5), Central Coast Water Board staff participated on the CDF interdisciplinary review team for the Fourwaters NTMP. CDF considered the recommendations made on the Fourwaters NTMP by the interdisciplinary review team before determining that the Fourwaters NTMP conforms to the Forest Practices Act and Board of Forestry Regulations.
15. The Water Board has considered the NTMP in the adoption of this Order. This Order requires the Discharger to comply with all requirements of the NTMP and Monitoring and Reporting Program R3-2007-0073.
16. CDF regulates timber harvesting practices in the State and requires the Discharger to implement practices to control water quality impacts, including erosion and sedimentation. The Discharger must also comply with any local ordinances that also require various controls to protect water quality. The conditions of this Order protect beneficial uses by:
 - (i) Prohibiting pollution, contamination or nuisance;
 - (ii) Requiring monitoring and compliance with applicable water quality control plans;
 - (iii) Requiring the Discharger to grant access to Water Board staff to perform inspections; and

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- (iv) Requiring approval of the NTMP by CDF.
- 17. Management practices are the most feasible treatment method to prevent or control the discharges. If a proposed timber harvest is conducted in the manner prescribed in the NTMP and the conditions of this Order, an individual conditional waiver of waste discharge requirements is in the public interest and is consistent with applicable water quality control plans, including the Water Quality Control Plan, Central Coast Region.
- 18. The winter period for the Central Coast Region shall be October 15 through April 15.
- 19. The rain year for the Central Coast Region shall be July 1 through June 30.
- 20. This entry into the Fourwaters NTMP 1-00NTMP-066 SCR involves selective harvesting of 188 acres of a 334 acre parcel utilizing ground-based, cable, and helicopter selective harvest. The proposed harvest covers 188 acres of the 6224 acre planning watershed (Newell Creek Watershed - CalWater V1.2: 304.120600). Approximately 27% of the watershed has been selectively harvested within the last 15 years.
- 21. The Discharger is required to conduct visual, photo, turbidity, and temperature monitoring as a condition of the Individual Waiver.
- 22. The Water Board conducted a public hearing on September 7, 2007, in San Luis Obispo, California, and considered all testimony and evidence concerning this matter;

THEREFORE IT IS HEREBY ORDERED:

- 1. In accordance with CWC Section 13269, the waste discharges associated with timber harvest activities of NTMP 1-00NTMP-066 SCR Fourwaters NTMP in the Central Coast Region shall be subject to the following conditions, and the requirement to obtain waste discharge requirements is hereby waived, subject to the following conditions:
 - a. "Discharger" means the landowner and anyone working on behalf of the landowner in the conduct of timber harvest activities.
 - b. The Discharger shall comply with all requirements of applicable water quality control plans adopted by the Water Board and approved by the State Water Board, and water quality control plans and policies adopted by the State Water Board.
 - c. The Discharger shall conduct timber harvest activities in accordance with the approved NTMP and with all applicable sections of the Forest Practice Rules.

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- d. The Discharger shall notify the Water Board concurrently when submitting a request to CDF for a minor or major amendment.
- e. The Discharger shall obtain and comply with all local, state and federal permits required by law. The Discharger shall comply with all applicable county ordinances related to timber operations, including zoning ordinances.
- f. The Discharger shall not create a condition of pollution, contamination, or nuisance, as defined by CWC Section 13050.
- g. The Discharger shall not discharge any waste not specifically regulated by this individual conditional waiver, except in compliance with CWC Section 13264. Waste specifically regulated by this Order includes: earthen materials including soil, silt, sand, clay, rock; and organic materials such as slash, sawdust, or bark. Examples of waste not specifically regulated by this Order include petroleum products, hazardous materials, or human wastes.
- h. The Discharger shall not cause alteration in stream temperature that exceeds Basin Plan requirements.
- i. The Discharger shall allow Water Board staff reasonable access, pursuant to Public Resources Code 4604 (b), onto NTMP 1-00NTMP-066 SCR Fourwaters NTMP for the purpose of performing inspections to determine compliance with these requirements.
- j. Pursuant to California Water Code Sections 13267 and 13269, the Discharger shall comply with Monitoring and Reporting Program (MRP) No. R3-2007-0073. Water Board staff needs this information to verify that these individual conditional waiver requirements are the appropriate regulatory tool for Timber Harvest activities for NTMP 1-00NTMP-066 SCR Fourwaters. Evidence that supports the need for this information was presented in the Discharger's ROWD.
- k. This Order does not regulate point-source discharges that require a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act, including but not limited to silvicultural point-source discharges as defined in 40 CFR Chapter 1 Part 122.27.
- l. The Discharger shall take immediate action to repair failed crossings, culverts, roads and other sources of sediment as soon as possible.
- m. The Discharger shall maintain all erosion and sediment control devices, management measures and mitigations prescribed in the NTMP for the term of this Order.

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- n. The Discharger shall notify the Water Board prior to applying herbicides on the property for the purpose of controlling Group B species.
 - o. The Discharger shall comply with all requirements of the Executive Officer pursuant to MRP R3-2007-0073.
2. The Water Board finds that the adoption of this Order will not have a significant impact on the environment and will be in the public interest provided that the Discharger:
- (a) Complies with the conditions of this Order; and
 - (b) Complies with applicable State Water Board and Water Board plans and policies and as those plans and policies may be amended from time to time through the amendment process;
3. This Order shall not create a vested right to discharge and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.
4. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Water Board from administering enforcement remedies (including civil liability) pursuant to the CWC.
5. The Executive Officer may terminate the applicability of the individual conditional waiver for 1-00NTMP-066 SCR Fourwaters if the Executive Officer makes any of the following determinations:
- a. The timber harvest activity is not in compliance with any applicable condition of this individual conditional waiver.
 - b. The timber harvest activity has varied in whole or in any part from the approved NTMP, unless these changes result in better protection of water quality.
6. The Executive Officer or Water Board may terminate the applicability of this Individual Conditional Waiver at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the State.
7. Upon receipt of notice of termination of applicability of the individual conditional waiver, the Discharger shall immediately cease all timber harvest activities that may result in discharges to waters of the State, other than activities necessary to control

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erosion. Upon notice of termination, the discharger must file a report of waste discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the State may commence only upon enrollment by the Executive Officer under general waste discharge requirements or individual waste discharge requirements, or in accordance with CWC Section 13264(a).

8. This Order shall become effective on September 7, 2007, and shall expire on September 7, 2012, unless terminated or renewed by the Water Board. The Water Board may terminate this Individual Conditional Waiver at any time.
9. As provided by CWC Section 13350(a), any person who, in violation of any waiver condition, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, is subject to administrative or civil liability for the violation.
10. Any person affected by this action of the Water Board may petition the State Water Board to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within thirty (30) days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on September 7, 2007.

Roger W. Briggs, Executive Officer

Date